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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8633 of 1999

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgment?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

MANJIT SINGH JAGAT SINGH

Versus

APPELLATE TRIBUNAL FOR FORFEITURE PROPERTY

Appearance:

MR RS SANJANWALA for Petitioner No. 1
SERVED BY RPAD - (R) for Respondent No. 1
MS MANISHA LAVKUMAR for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 23/06/2004

ORAL JUDGEMENT

by filing this petition, the petitioner has
challenged the order of the Appellate Tribunal for
Forfeited Property, New Delhi, by which the Appellate
Tribunal has passed an order regarding forfeiture of the

property of one Mahendra Chimanlal Vakharia. It seems that the said Mahendra Chimanlal Vakharia was detained under COFEPOSA by the Competent Authority, vide order dated 25.11.1994. Subsequently, the authority initiated proceedings under SAFEMA for the purpose of forfeiting the property of the aforesaid person, who was alleged to be indulging in smuggling activity. It seems that the aforesaid order of the Authority under SAFEMA is challenged by the said Mr.Vakharia by filing a writ petition in the Mumbai High Court and Ms.Manisha Lavkumar, learned Additional Central Government Standing Counsel, states that the matter is pending before the Mumbai High Court and the number of the said case is Writ Petition No.685 of 1999. She has also further stated that even the Mumbai High Court has also granted interim relief vide order dated 2.8.1999 and the authority is accordingly restrained from taking over the possession of the property in question. So far as the present petitioner is concerned, he is one of the occupants of the said property, as, according to the petitioner, he is a bona fide purchaser of the property in question. Ms.Manisha Lavkumar, learned Advocate for the Union of India, however, pointed out that as long as the stay of the Bombay High Court operates, the authority cannot take any action for the purpose of taking possession of the property in question. Since, at present, possession cannot be taken from the present petitioner, as the order of forfeiture itself is stayed by the Mumbai High Court, naturally, the petitioner cannot be evicted as long as the aforesaid interim relief, which is granted by the Mumbai High Court, is in force.

Realising the aforesaid factual aspect, Mr.Sanjanwala, learned Advocate for the petitioner, submitted that the present petitioner may either move the Mumbai High Court by filing appropriate writ petition since the main matter is pending before that Court, or the petitioner may file a substantive petition in case the decision in the pending petition before the Mumbai High Court is against the original owner of the property. He, therefore, seeks permission to withdraw this petition in order to avail of either of the aforesaid remedies, i.e. approaching the Mumbai High Court by filing appropriate writ petition or filing a substantive petition in case the decision is against Mr.Vakharia in the pending petition.

Permission is granted. This Special Civil Application is accordingly disposed of as withdrawn. Rule is discharged.

It is clarified that this Court has not adjudicated any points and has not dealt with the merits of the said issue, as, the matter is sub judice before the Mumbai High Court against the principal owner of the said property. It will be open for the petitioner to move the Mumbai High Court or even to challenge the decision at a later point of time, if, ultimately, the decision is against Mr.Vakharia, in the pending petition, as indicated above, and if the petitioner is likely to be adversely affected by any such order.

Ms.Manisha Lavkumar, learned Advocate for the Union of India, has stated that when there is a stay operating, the authority will not flout the order of stay and it is not necessary to pass any further order of extension of interim relief.

23rd June, 2004 (P.B. Majmudar, J.)

(apj)